



September 18, 2001

Mr. John S. Holleman
Criminal District Attorney
Polk County
P.O. Box 1717
Livingston, Texas 77351

Mr. Billy R. Nelson
Sheriff
Polk County
1733 North Washington
Livingston, Texas 77351

OR2001-4179

Dear Sirs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152109.

The Polk County Criminal District Attorney's Office (the "district attorney") and the Polk County Sheriff's Office (the "sheriff's office") each received a request for copies of the complete case file pertaining to a specified incident. The sheriff's office also received a request for two sheets from police radio logs for a specified date. The sheriff's office states that it does not maintain documents that are responsive to the portion of the request for two sheets from police radio logs for the specified date.¹ You each claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the

¹ It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. Accordingly, we do not address the part of the request for information related to the two sheets from police radio logs for the specified date.

Government Code.² We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the sheriff's office failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). However, the sheriff's office did not provide us with any information that is responsive to the request. When a governmental body fails to submit responsive information to us for review that it wishes to withhold from disclosure, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is some source of law that makes the information confidential or a demonstration that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The sheriff's office claims that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. However, we conclude that the sheriff's office has not demonstrated a compelling reason under section 552.108 to withhold the requested documents from disclosure. *See* Open Records Decision No. 586 (1991) (stating that need of governmental body, other than one that received written request, may constitute compelling reason to overcome presumption that information is public). Furthermore, because the sheriff's office did not submit a copy of the requested information for our review, we have no basis for concluding that any of it is otherwise confidential by law. Accordingly, we conclude that the sheriff's office must release all information that it holds that is responsive to the request for information.

Next, we address the district attorney's claim that the information he submitted to us for review is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

....

² Although you claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code, you offer no independent reasons why section 552.101 makes any of the information confidential by law. Accordingly, we do not address your section 552.101 claim regarding the submitted information.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). Generally, a governmental body claiming section 552.108 as an exception to disclosure must demonstrate, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) excepts from disclosure information relating to a closed case that did not result in conviction or deferred adjudication. See Gov't Code § 552.108(a)(2). The district attorney states that the actions of a particular police officer who was involved in the specified incident were presented to a grand jury which determined that no probable cause existed to believe that the police officer committed a criminal offense regarding the specified incident. The district attorney also states that the investigation did not result in the officer's conviction or in the imposition of deferred adjudication probation. Based on the district attorney's representations and our review of the submitted information, we conclude that the district attorney has demonstrated that this case concluded in a final result other than conviction or deferred adjudication. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of basic information, the district attorney may withhold the submitted information from disclosure pursuant to section 552.108(a)(2) of the Government Code. See Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

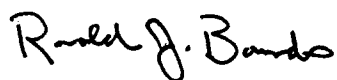
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 152109

Enc. Submitted documents

cc: Ms. Debra Barber
P.O. Box 1733
Livingston, Texas 77351
(w/o enclosures)